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February 5, 1996

VIA FACSIMILE (303) 231-3194 AND FEDERAL EXPRESS

Minerals Management Service
Royalty Management Program
Denver Federal Center, Bldg. 85
P.O. Box 25165, Mail Stop 3101
Denver, Colorado 80225-0165
Attn: David S. Guzy, Chief, Rules and Procedure Staff



Re: Blackwood & Nichols Co., a Limited Partnership
and Devon Energy Corporation
Comments - Proposed Rulemaking - Amendments to Gas Valuation Regulations
for Federal Leases.
60 Fed. Reg. 56007 et. seq.

Dear Mr. Guzy:

Blackwood & Nichols Co., a Limited Partnership (B&N), and Devon Energy Corporation (Devon) appreciate the opportunity to provide these comments on the work of the Federal Gas Valuation negotiated Rulemaking Committee (NRC) and the proposed rule. B&N and Devon believe that the proposals to eliminate allowance forms, eliminate dual accounting for non-arm's length sales of processed gas, redefine the term gathering, permit deduction of downstream compression expense and permit valuation of natural gas liquids on a wellhead MMBtu basis are helpful steps in the right direction and will assist in improving royalty accounting and payment procedures.

I. Coal Seam Gas

1. Zone Determination and Coalbed Methane Production (§206.454(g) at 60 FR 56027)

The rulemaking is deficient in its failure to address valuation of unconventional natural gas including coalbed methane gas. New technology has enabled the industry to tap these resources. The proposed regulations are inadequate to address, among other things, the deposition

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and production of coal seam gas. Incorporated herein by reference is the record of the December 19-20, 1994 meetings and the January 29 - February 3, 1995 meetings. With respect to coal seam gas, B&N and Devon strongly disagreed with MMS and the States on this issue. B&N and Devon strongly believed that higher transportation costs within a zone critically impact zone determination. B&N and Devon believed that there was inconsistent Committee treatment of unique offshore production (deepwater) and unique onshore production. There was disagreement in the Committee as to what was a quality issue versus what was a transportation issue. The record reflects that there was inadequate consideration of coal seam gas due to, among other things, strong conflicts among the Committee members, and a lack of time devoted to fairly and impartially study the issues as they relate to valuation of coal seam gas.

As to the specifics of unconventional gas and coal seam gas, attached as Exhibit "A" is a copy of the proposed December 19-20, 1994 meeting minutes. During the following meeting on January 29, 1995, the December 19-20 minutes were revised and corrected as reflected in Exhibit "B". Two important concepts are contained in the corrected minutes which are not accurately reflected in the proposed regulations. The Committee's December 19-20 minutes state:

1. "The Committee's treatment of unique offshore production is inconsistent with the Committee's treatment of unique onshore production."
2. "The issues involving the safety net calculation for nonconventional gas could not be agreed upon by the Committee. Therefore, there will be no Committee language on nonconventional gas production in the Committee Report or the proposed rule."

The proposed rule does not faithfully and accurately incorporate the concepts reflected in the Committee's minutes.

As the minutes state, there was no committee consensus on the calculation of the safety net for nonconventional gas in the San Juan Basin. B&N and Devon would request that a separate or different safety net calculation be performed for coal seam gas in the San Juan Basin to take into account, among other things, its differing depositional and production characteristics. Clearly, one safety net calculation that includes both conventional and nonconventional coal seam gas does not accurately, properly or fairly reflect the factors (including costs) attendant to either. As an alternative, B&N and Devon request that a separate San Juan Basin zone be established for coalbed gas which would thereby provide for a separate and distinct safety net calculation for a separate San Juan Basin coal seam gas zone. Likewise, a separate zone would take into account and achieve the objectives intended by the zone determination and the safety net calculation.

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As to the inconsistent treatment of offshore and onshore production, B&N and Devon commend the Committee for recognizing unique offshore production and deepwater costs, but requests consistent treatment in the costs associated with unique or unconventional onshore production such as coal seam gas.

B&N and Devon would request that the preamble to the final regulations should state that:

"The proposed rules do not adequately address coalbed methane production. Further consideration should be given and a separate zone for San Juan Basin coalbed methane production should be established."

In addition, the final regulation itself should be amended to renumber §206.454(g)(3) of the proposal to become §206.454(g)(4), while adding a new §206.454(g)(3):

(3) "Unique characteristics."

(4) "Unconventional production such as coalbed methane production."

B&N believes that determination of zones which will be appropriate for index pricing should not be published by MMS without prior notice and invitation for public comment. It is imperative that the MMS hold public hearings to determine if the index methodology is appropriate for a given zone. Industry should have an opportunity to comment on the formation of zones and also on the viability of zones.

II. Proceeds

B&N and Devon believe that any royalty valuation system must recognize that the actual proceeds received by a lessee at the wellhead under arm's-length contracts are a final and incontestable determinant of value. B&N and Devon strongly oppose any royalty valuation system which forces a lessee to pay royalties on any value which is in excess of the price they received for their gas at the wellhead value. While B&N and Devon recognize that the MMS's proposed rule does not require such a system, B&N and Devon are concerned that the MMS will require them to pay royalties on a value higher than the price received.

III. Errors

For the purpose of preserving the record, there are three errors to be noted. First, at a critical juncture during the official Committee meetings on February 3, 1995, a person designated to represent IPAMS/IPAA who requested participation as the IPAMS/IPAA substitute member was denied the right to participate in the Committee and was also excluded from the Committee's meeting. The apparent basis for the exclusion was that such person was a substitute and not the official Committee member or alternate, despite the fact that other substitutes were routinely permitted to participate in the Committee's membership. In fact, at the very time of the exclusion, there was another substitute seated, acting and voting as a Committee member. The exclusion of the IPAMS/IPAA substitute member was without basis, was discriminatory as it related to prior practices of the Committee, and was unlawful.

The second error to be noted is the unlawful closing of the Committee's public meeting on February 3, 1995. The Federal Advisory Committee Act (FACA) was enacted primarily to establish oversight and accountability for the numerous committees, boards, commissions, councils and similar groups which are established to advise the executive branch of the Federal Government.¹ The Act sets out the functions in performing the oversight functions required in the Act. The term "advisory committee" is defined in the Act.² Basically, as is relevant to the Federal Gas Valuation Negotiated Rulemaking Committee, the Committee Management Secretariat ("Secretariat") (under the auspices of the Administrator of General Services ("Administrator")), the Secretary of the Department of the Interior ("Secretary"), and the DOI Advisory Committee Management Officer ("Management Officer") are to provide the oversight functions.³

¹ 5 U.S.C. App. II, §2

² 5 U.S.C. App. II, §3

³ The Administrator, through the Secretariat, is to conduct annual reviews of all committees and submit reports to the President and the Secretary as to any action he believes should be taken. 5 U.S.C. App. II, §7(a) & (b). He is also to prescribe administrative guidelines and management controls for all advisory committees. *Id.* §7(c). He is to set pay rates and recommend budgets for the committees. *Id.* §7(d) and (e). The Secretary is also to establish uniform administrative guidelines and management controls for advisory committees established by the DOI, which administrative guidelines are to be consistent with those of the Administrator. *Id.* §8. The Secretary is to designate an "Advisory Committee Management Officer" for the DOI, who exercises control over all the DOI advisory committees and assembles and maintains the records and papers of each committee. *Id.*

With only the exceptions noted below, each advisory committee meeting shall be open to the public.⁴ This means that interested persons "shall be permitted to attend, appear before, or file statements with" any advisory committee, subject to regulations promulgated by the Administrator.⁵ Also, subject to the Government in Sunshine Act, 5 U.S.C. §5, the records reports, transcripts, minutes, working papers, etc. shall be available for public inspection and copying.⁶ The statute provides that the only way to close a meeting or part of a meeting is for the head of the agency (here, the Secretary of the Department of the Interior) to determine, in writing, that one of the exceptions found in 5 U.S.C. §552b (c) applies, stating the reasons therefor.⁷

The General Services Administration has issued a final rule concerning the closing of advisory committee meetings, which is found in 41 CFR Part 101-6.1001 et seq.⁸

⁴ 5 U.S.C. App. II, §10

⁵ Id.

⁶ Id.

⁷ Id. §10(d)

⁸ That relevant part of that rule provides in §101-6.1015(b) that, as to committee meetings, (1) The agency. . . shall publish at least 15 calendar days prior to an advisory committee meeting a notice in the Federal Register, which includes:

- (i) The exact name of the advisory committee as chartered;
- (ii) The time, date, place, and purpose of the meeting;
- (iii) A summary of the agenda; and
- (iv) A statement whether all or part of the meeting is open to the public or closed, and if closed, the reasons why, citing the specific exemptions of the Government in the Sunshine Act (5 U.S.C. 552(b)) as the basis for closure.

- (2) In exceptional circumstances, the agency or an independent Presidential advisory committee may give less than 15 days notice, provided that the reasons for doing so are included in the committee meeting notice published in the Federal Register.

The GSA rule also provides the "Procedures for closing an advisory committee meeting" in §101-6.1023, which reads in pertinent part as follows:

- (a) To close all or part of a meeting, an advisory committee shall submit a request to the agency head. . . citing the specific provisions of the Government in the Sunshine Act (5 U.S.C. 552(b)) which justify the closure. The request shall provide the agency head. . . sufficient time to review the matter in order to make a determination prior to publication of the meeting notice required by §101-6.1015(b).

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Attached as Exhibit "C" is the DOI notice of establishment of the Federal Gas Valuation Negotiated Rulemaking Committee. The requisite notice in the Federal Register for meetings of the Federal Gas Valuation Negotiated Rulemaking Committee taking place on the following days are enclosed as Exhibit "D".

January 30, 1995
January 31, 1995
February 1, 1995
February 2, 1995
February 3, 1995

The notices state that "[t]he meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration." Under both FACA and the GSA Final Rule, all portions of all meetings, including the February 3rd meeting, were required by law to be and remain open to the public. The Committee did not comply with the statute or the rule when it closed the meeting to the public on February 3, 1995. The Committee's actions were unlawful.

Finally, to punctuate the illegality of the closed February 3rd meeting, the required tape recordings of the February 3 meeting contain silent gaps in the recordings of the February 3 proceedings. Specifically, the tape of the February 3 meeting is blank and does not contain the facilitator's announcement that the meeting was being closed to the public and that the public was required to leave the room. Further, the February 3 tape is silent and does not contain the record of the request by IPAMS/IPAA to have a substitute member represent it on the Committee and during the "closed" meeting session. Finally, the record reflects that the tape recorder was intentionally turned off and no tape recording made of the transactions of the Committee during its "closed, non-public" meeting on February 3, 1995. The purpose and express provisions of the

-
- (b) The general counsel of the agency. . . should review all requests to close meetings.
 - (c) If the agency head. . . agrees that the request is consistent with the provisions in the Government in the Sunshine Act and the Federal Advisory Committee Act, he or she shall issue a determination that all or part of the meeting be closed.
 - (d) The agency head. . . shall:
 - (1) Make a copy of the determination available to the public upon request and
 - (2) State the reasons why all or part of the meeting is closed, citing the specific exceptions used from the Government in the Sunshine Act in the meeting notice published in the Federal Register.

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FACA and the public notice were violated. Failure, both by omission or intention, to record the business of the Committee on February 3 was unlawful.

Sincerely,

A handwritten signature in cursive script that reads "Patricia Dunmire Bragg". The signature is written in dark ink and is positioned above the printed name.

Patricia Dunmire Bragg

PDB/tjp
Enclosures
19245.08

MINUTES**FEDERAL GAS VALUATION NEGOTIATED RULEMAKING COMMITTEE**

**December 19 - 20, 1994
DENVER, COLORADO**

MINUTE TAKER: John Barder (303) 275-7234

NEXT MEETING: January 30, 10 a.m. - February 3, 12 noon, 1995

Monday December 19, 1994

HOUSEKEEPING ITEMS

Debbie provided eight handouts: (1) November/December minutes; (2) evaluations; (3) Proposals reached by consensus as of December 7, 1994; (4) Remaining parking lot issues as of December 7, 1994; (5) Committee proposal for valuing natural gas as of December 7, 1994; (6) Committee's options for establishing value when no representative volume exists; (7) David Darouse's memorandum dated December 1, 1994; and (8) agenda.

PREVIOUS MINUTES - Corrections

Page 2: under "Report from the Subcommittee on Location Differentials" add the sentence "Committee did not have consensus on the 10 percent threshold." after the sentence "Tammy Naron presented the subcommittee's proposal to the full committee."

Page 2: under Index pricing second line, change "IPP" to "index pricing point (IPP)" and add the word "current" after "Use".

Page 2: under Index pricing fifth line, add the word "current" after "Use the".

Page 3: twelfth line under 2a., change "its" to "it's".

Page 3: fifteenth line under 2b., delete "(about 20¢)"

Page 3: sixteenth line under 2b., add "The Subcommittee found that at least 90 percent of the gas moves at max IT upstream of the index point." before "For non-jurisdictional pipes ..."

Page 4: sixth line, add the word "available" before the word "through".

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, fourth line, replace the word "ugly" with the word "difficult".

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, seventh line under 2., add the sentence "Where the committee does not reach a consensus on certain issues, MMS will decide the issue."

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, line nine, replace "th" with "the".

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, line thirteen, add to the end of the last sentence "due to limitations on the number of committees that the Department may have."

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, line fourteen, replace the word "strategy" with the word "methodology".

Page 4: under ADDRESS BY ASSOCIATE DIRECTOR JIM SHAW, line fifteen, replace the abbreviation "FACA" with "Federal Advisory Committee Act (FACA)".

Page 5: first line, replace the word "strategy" with the word "methodology".

Page 5: line eleven, add the word "offshore" before the word "using".

Page 9: under "Toni Hennike/API", second line, add the words "Some of" at the beginning of the sentence.

Page 11: under "IPP" add the words "(last year's)" to the end of line two.

Page 12: add the words "(last year's)" to the end of lines six, seven, and seventeen.

Page 16: add the words "(last year's)" to the end of lines six and seven.

Page 17: line three, replace the words "an audit proof rate" with "a rate not subject to audit".

Page 18: line eleven, end the parenthesis after the word "books" and delete the remaining part of the sentence.

Page 18: line 22 under NL/AL, 2. lessee-determined rate, add the following at the end of the sentence "Documents that could be supplied in support of that rate include but are not limited to (and not necessarily in this order), (1)copies of third party contracts, (2) pipeline published rates, (3) rates applicable to last flow."

Page 18: line 28, add to the beginning of the sentence "For a fee based on the cost of obtaining information from the pipelines," and delete the words "however, it will charge a fee to collect such rates from pipelines under FOGRMA".

Page 19: line one, add the phrase "subject to audit" after the word "be".

Page 19: last line, replace the words "the next" with the words "it has been in existence for a" and add the phrase "in order to determine which index was the highest or second highest." at the end of the sentence.

Page 20: under the fourth bullet, number 2., add the phrase "In a previous meeting," at the beginning of the second sentence.

Page 20: under the fourth bullet, number 2., add at the beginning of the second sentence, "At a previous meeting at which Ellen Beswik was present (see April minutes, page 5)".

Page 20: under the fourth bullet add the sentence "The committee agreed that these wellhead indices may not be representative of market value " as the last sentence.

Page 21: under b), add the sentence "If there is still a tie, the lessee chooses." as the last sentence.

Page 21: add the letter d), "Whatever IPP is ultimately chosen, the location differential is from the wellhead to the IPP.

Page 22: sixth bullet, third sentence, add an "s" to the word "member".

Page 22: sixth bullet, seventh sentence, replace "from BLM and offshore" with "as necessary".

Page 23: first bullet, number 10., add a last sentence which reads "The booked gross proceeds can be non-arm's-length gross proceeds."

Page 24: third bullet, first line, replace the word "groups offered to participate" with "packages of gas were made available to bid on".

Page 24 : third bullet, second line, replace "All were accepted" with "33 were accepted".

The committee report and the proposed rule will be ready to review at the last meeting.

The committee revisited the objectives and goals of last January - April minutes.

- Simplicity
- Certainty
- Administrative saving
- Working methodology under FERC order 636
- Revenue neutrality

The committee also revisited the code of conduct.

- Determine objectives
- Be open and honest
- Find 80 percent
- Don't be too narrow on issues
- Stay focused

At this time, Debbie asked for a gut check to see if the committee felt we were still on the right track and were achieving our goals and objectives.

- John Price - feels the rule we are developing is getting more and more complicated. He believes that all of the choices offered to lessees allows for second guessing by the auditors.
- Toni Hennike - feels that we don't have simplicity, certainty or administrative saving with the current proposals. She also believes that the true-up mechanism has some fundamental legal problems.
- George Butler - feels that we have negotiated in good faith and that we have a compromised rule. He also feels that we have some certainty and

administrative savings in the proposals. He feels that the old rules have more litigation risk.

- Mary Stonecipher - don't see true simplicity until we apply the index to a wellhead MMBtu
- Ben Dillon - feels that there were checks and safeguards when every proposal was decided. He also stated that if the proposal/rule adopted by the committee is changed substantially or goes in another direction due to comments or politics, he wants to reconvene the group to review the change.
- Rusty Cates - There has to be a certain level of trust to achieve a comfort level for committee members. He believes we have dramatically simplified the current rules. He pointed out that this is a complex business.
- Brad Simpson - feels there are checks and balances and believes that complication equals comfort level.
- Valdean Severson - feels that we haven't reached any simplicity. He stated that the reason for the sideways votes is the various options provided in the proposals.
- Steve Williams - feels that we haven't achieved any simplicity but have achieved some certainty.
- George Staigle - He agrees with the choices and does not believe that there are gray areas that allow for second guessing.
- Wanda Flemming - feels that the States and MMS are going to take a big revenue hit. She feels that we have not gotten any simplification. However, she agrees with the choices given to the lessee and does not believe there are any gray areas.
- Bob Fox - Given the diversity of the committee, we will never obtain pure simplicity and certainty.
- David Lanning - asked the question, are any of the sideways votes going to change to down votes? He believes that a sideways vote still means that you can live with the proposal.
- Alex Woodruff - feels that the independents have been disadvantaged on this committee by the additional audit burden they will incur and having to pay royalty on phantom income.

RECOMMENDATION

The Committee reached consensus that we stay the course. That is, the committee will move forward and continue to work on the proposals that we have agreed on thus far.

The Committee also agreed to include a recommendation in its final report, that if public comments on the proposed rule warrant substantial changes to the final rule, then the committee should be rechartered to consider those comments/changes and resolve any disputes.

COMMENTS ON THE PROPOSAL FOR VALUATION OF NATURAL GAS

The Committee made several changes to the Proposal for Valuation of Natural Gas. The changes are reflected in the December 21, 1994, version of the Proposal.

EXAMPLES OF THE CAP CALCULATION

Example 1.

\$2.30/MMBtu - Median value as determined by MMS

\$2.15/MMBtu - Subsequent year's CAP at 50% of delta

\$2.10/MMBtu - First year's CAP at 105% of the lessee's index

\$2.00/MMBtu - Lessee's index value

Example 2.

\$2.15/MMBtu - Median value as determined by MMS

\$2.10/MMBtu - First year's CAP at 105% of the lessee's index value

\$2.08/MMBtu - Subsequent year's CAP at 50% of delta.

\$2.00/MMBtu - Lessee's index value

The above examples are to be included in the committee report.

The committee agreed to maintain the status quo on the 50 percent limit on transportation. The current rules allow the lessee to request MMS approval to exceed the 50 percent limit.

- A new allowance rule should be published in the Federal Register in the near future.
- Transportation should not be a problem with the index pricing point closer to the wellhead.

The Committee agreed that the definition of natural gas for in the new proposed rule should exclude carbon dioxide.

BASIN DETERMINATION

- How do we break up the Gulf OCS for index purposes?
- There were two recommendations on how to break-up the Gulf into zones
 1. Strictly geographic with no exceptions for production being produced in one zone but crossing into another zone.
 2. Geographic but with cross zone true-up. If a lease is in one zone but the production crosses into an adjacent zone, the true-up would be based on that adjacent zone.

Pros and Cons for strictly geographic

- Very simple
- Minimizes market disparity

Pros and Cons for geographic but with cross zone true-ups

- Eliminates market disparity
- Gross proceeds v. index pricing argument
- Extremely complex true-up
- Administratively burdensome
- Field/zone determination difficult
- Zone to field listing could change monthly

Factors/conditions for basin determination (initial list)

- Common markets served
- Common pipeline systems
- Simplification
- Easily identifiable in MMS' system e.g. block/area
- Expectation for substantial volumes
- Deepwater blocks would go into their respective zones based on first shelf tie-in with appropriate addition allocation differential.

Basin Determination and the Median Value and Safety Net Calculation

- Q1. Gross proceeds median value calculation is based on gross proceeds for all leases geographically located in a zone.
- Q2. For index payors, true-up to the gross proceeds median value for the zone where the lease is geographically located. (don't cross zone)

Offshore basin determination

Zone 1 includes the following areas and additions:

- South Padre Island Area with the East Addition
- North Padre Island Area with the East Addition
- Mustang Island Area with the East Addition
- Matagorda Island Area
- Brazos Area with the South Addition
- Corpus Christi Area (Deepwater)
- Port Isabel Area (Deepwater)

Zone 2 includes the following areas and additions

- Galveston Area with the South Addition
- High Island Area with the South Addition, East Addition, and East Addition South extension
- Sabine Pass Area
- West Cameron Area West Addition
- West Cameron Area South Addition
- West Cameron Area Blocks 4-14, 16-23, 42-49, 53-59, 78-83, 90-95, 114-118, 128-131, 150-153, 165-167, 186-189, 208, and 209
- East Breaks (Deepwater)
- Alaminos Canyon (Deepwater)

Zone 3 includes the following areas and additions

- West Cameron Area excluding the blocks listed in Zone 2
- East Cameron Area with the South Addition
- Vermillion Area with the South Addition
- South Marsh Island Area with the South Addition
- Bay Marchand Area
- Eugene Island Area with the South Addition
- Ship Shoal Area with the South Addition
- South Pelto Area
- South Timbalier Area with the South Addition
- Grand Isle Area South Addition
- Ewing Bank Area
- Green Canyon (Deepwater)
- Walker Ridge (Deepwater)
- Garden Banks (Deepwater)
- Keathley Canyon (Deepwater)

Zone 4 includes the following areas and additions

- Grand Isle Area
- West Delta Area with the South Addition
- Chandeleur Area
- Main Pass Area with the East and South Additions
- South Pass Area with the East and South Additions
- Viosca Knoll Area
- Breton Sound Area
- Mississippi Canyon (Deepwater)
- Atwater (Deepwater)
- Lund (Deepwater)

Zone 5 includes the following area

- Mobile Area

ONSHORE ZONE DETERMINATION

Oklahoma Zone 1 (initial list)

- Anadarko
- Guymon - Hugaton

Oklahoma Zone 2

- Arkoma

Oklahoma Zone 3

- Southern Oklahoma and the Arbuckle Upthrust

ROCKY MOUNTAINS ZONE DETERMINATION

Northern Zone (initial list)

- Green River Basin
- Red Desert Basin
- Washakie Basin
- Wind River Basin
- Northern Utah
- Bighorn (Wyoming)
- North West Colorado

Central Zone

- Uinta Basin
- Piceance Basin
- Paradox Basin

OTHER BASIN DETERMINATIONS

Denver Basin Zone

San Juan Basin Zone (coal seam?)

Permian Basin Zone (S.E. New Mexico and W. Texas)

Possible/Eligible Zones (subject to active spot market)

- San Luis Basin
- Raton Basin
- Williston Basin
- Hogeland Basin
- Powder River Basin

The committee asked for a caucus to consider the zones for which a lessee may pay royalties on index.

MMS/STATES RECOMMENDATIONS

- The answer to questions 1 and 2 is yes.
- Agree with all the factor/conditions except "expectations for substantial volumes". Strike this condition.
- Agree with the offshore zones except for deepwater.
- Move the Bighorn Basin to the possible/eligible basin list
- Change the Oklahoma zone 1 to include Guymon-Hugaton, zone 2 to include Anadarko basin and southern Oklahoma, and zone 3 to include Arkoma Basin and Arbuckle Upthrust.

The idea was presented that all of deepwater should not be in one zone but nothing was discussed as to how many deepwater zones there would be and how the lines would be drawn.

Proposal on Deepwater

Deepwater blocks would go into their respective zones based on first shelf tie-in with appropriate addition allocation differential. That is, the first zone where the

deepwater production ties into the shelf would be the zone used for the true-up. If this true-up is used an additional location differential will be applied.

INDUSTRY RECOMMENDATIONS

- Industry generally agreed with the above proposal on deepwater and agreed to the five zones as changed between zone 2 and zone 3.
- Industry generally agreed to the MMS/States change in the Oklahoma zones.
- Coal seam gas in the San Juan Basin should be a separate zone with a special transaction code or product code.
- Conventional gas in the San Juan Basin should be a separate zone with a special transaction code or product code.
- Coal seam gas requires different infield pipelines because of the corrosive nature of the gas which means much higher costs to transport the gas.
- Industry is proposing this just for the San Juan Basin. The transportation would not include cost to dehydrate, to process, or for fuel. It would only include special line costs.
- If there is a representative volume of coal seam gross proceeds payors in the zone, then the gross proceeds true-up to conventional gross proceeds in the zone would be okay.
- If there isn't a representative volume of coal seam gross proceeds payors in the zone, then the gross proceeds true-up to conventional gross proceeds in the zone is not okay. If this is the case then they need recognition for extra transportation.

MMS/States did not like the proposal to make coal seam gas in the San Juan Basin a separate zone because it didn't meet the geographic condition and would not be consistent because it would ignore other coal seam gas and other non-conventional gas in other parts of the country.

TUESDAY, DECEMBER 20, 1994

ZONE DETERMINATION

Coal seam

Tammy Naron - If Congress is looking into incentives for coal bed methane, we should be a leader in this area.

Mary Stonecipher - You have to recognize the volumes involved in coal seam production in the San Juan Basin. The production amounts to approximately 25% of the San Juan Basin production.

Toni Hennike - Coal seam gas has distinct qualities which increases the cost to transport the gas over and above conventional gas.

John Price - Quality of production is the real issue. We should have a consistent policy with regard to frontier areas and carbon dioxide.

Brad Simpson - Like-quality is hard to enforce especially if your going to give exceptions. The true-up will essentially be worthless.

Bob Fox - Would like the option to come in on a case-by-case basis and prove that should get an additional deduction due to atypical gas stream and the costs they incur to transport the gas.

Ben Dillon - Only in those situations were there isn't a representative volume of arm's-length gross proceeds or payors, will you have a problem.

Non-conventional gas

Options

- Leave unresolved and have a subcommittee review and study it.

The committee took a break and caucused to discuss the San Juan Basin and the coal seam gas situation.

Industry Proposal

The proposed rule will state the zones and that the safety net makes no distinction for quality. MMS will ask for public comment on non-conventional gas in the preamble of the proposed rule. Industry also asked MMS to study the non-conventional gas situations as soon as possible to see if non-conventional gas sales drives the true-up one way or another. They ask that this be done by the effective date of the final rule.

A consensus was reached on the following committee proposal for zone determination:

Factors/conditions for zone determination

- Common markets served
- Common pipeline systems
- Simplification
- Easily identifiable in MMS' system e.g. block/area
- Deepwater blocks would go into their respective zones based on first shelf

tie-in with appropriate addition allocation differential.

Basin Determination and the Median Value and Safety Net Calculation

- Use the gross proceeds median value calculation based on gross proceeds for all leases geographically located in the zone.
- For index payors, use the lessee's true-up to the gross proceeds median value for the zone where the lease is geographically located.

Offshore and Onshore Zones

The zones for offshore leases as defined on pages 7 and 8 of these minutes as well as the concept for determining the true-up for deepwater on page 9, "Proposal for Deepwater".

The zones for onshore leases as listed below:

- Oklahoma Zone 1: Guymon - Hugaton
- Oklahoma Zone 2: Anadarko Basin and Southern Oklahoma
- Oklahoma Zone 3 - Arkoma Basin and Arbuckle Upthrust

Northern Zone

- Green River Basin
- Red Desert Basin
- Washakie Basin
- Wind River Basin
- Northern Utah
- North West Colorado

Central Zone

- Uinta Basin
- Piceance Basin
- Paradox Basin

Denver Basin Zone

San Juan Basin Zone - There will be no distinction for coal seam gas in the San Juan Zone. There will be no committee language on non-conventional gas in the committee report or the proposed rule.

Permian Basin Zone

- South East New Mexico
- West Texas

Wanda Fleming asked to withdraw her comments from a previous meeting regarding entitlements and administrative costs. The States would also like to move forward with the Negotiated Rulemaking process with the understanding that the safety net is a closed issue.

The committee took a break for lunch at this time

DEFINITION OF ACTIVE SPOT MARKET

- One or more valid publication, (bidweek prices, if bidweek prices are not available use first of month prices), with at least one index pricing point in the zone.
- Rationale: If a valid publication has chosen to publish a point in the zone, then there is sufficient spot sales at the index pricing point.

Basins with no active spot market as of December 1994

- San Luis
- Williston
- Bighorn, Montana
- Hogeland
- Powder River
- Raton

The committee reached consensus on the above definition of active spot market and basins with no active spot market.

REPRESENTATIVE VOLUME

Industry Proposal

- 25 percent of transactions/payors pay on their gross proceeds in a zone or
- 10 percent of the volume in a zone paid on gross proceeds and reported to MMS.

If no representative volume:

- Determine the weighted average by company of the percent differences of the gross proceeds payors and the index payors by zone.

Example

Company pays on index in three zones. One zone does not have a representative volume. True-up for the zone will be calculated by:

- 1) calculating the percent difference of median price and the company's index price paid for each zone (the two zones that had representative volume).
- 2) Weighted average of the percent differences.
- 3) Apply the weighted average percent to the company paid index rate of the zone that did not have a representative volume.

Industry hoped to minimize the number of occurrences where there is no representative volume by this proposal.

The committee agreed that using percentage of gross proceeds transactions would be a better measure of a representative sample than percentage of payors paying on gross proceeds.

Each committee member was asked, what percentages of volumes and transactions would indicate a representative sample in a zone.

Debbie Gibbs Tschudy - 10 percent of the total zone production paid on gross proceeds as reported to MMS.

John Barder - First, 25 percent of the total zone production paid on gross proceeds and reported to MMS. Second, 5 percent of transactions paid on gross proceeds in a zone and reported to MMS.

Brad Simpson - 5 percent of the total zone production paid on gross proceeds and reported to MMS or 25 percent of transactions reported to MMS .

Bob Fox - 10 percent of the total zone production as reported to MMS paid on gross proceeds or 25 percent of transactions paid on gross proceeds in a zone and reported to MMS.

Alex Woodruff - 5 percent of the total zone production paid on gross proceeds and reported to MMS or 25 percent of transaction/payors paid on gross proceeds in a zone and reported to MMS.

Roy Williams - 20 percent of the total zone production paid on gross proceeds and reported to MMS.

Wanda Flemming - First, 10 percent of the total zone production paid on gross proceeds and reported to MMS. Second, 25 percent of the payors paying on gross proceeds as reported to MMS for a zone.

Ron Struble - 25 percent of transactions paid on gross proceeds in a zone and reported to MMS.

Tammy Naron - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 20 percent of transactions paid on gross proceeds in a zone and reported to MMS.

Ben Dillon - First, 10 percent of the total zone production, paid on gross proceeds and reported to MMS. Second, 25 percent of transactions (TC 01 lines) paid on gross proceeds in a zone and reported to MMS.

Steve Williams - 5 percent of the total zone production paid on gross proceeds and reported to MMS or 20 percent of transactions paid on gross proceeds in a zone and reported to MMS.

Rusty Cates - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 25 percent of transactions paid gross proceeds in a zone and reported to MMS.

George Staigle - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 20 percent of transactions paid gross proceeds in a zone and reported to MMS.

John Price - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 20 percent of transactions paid gross proceeds in a zone and reported to MMS.

George Butler - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 20 percent of transactions paid gross proceeds in a zone and reported to MMS.

Valdean Severson - 10 percent of the total zone production paid on gross proceeds and reported to MMS or 15 percent of transactions paid gross proceeds in a zone and reported to MMS.

David Lanning - Will always have representative volume onshore because of casinghead gas onshore is dedicated and the volumes will be greater than the percentages required.

Larry Cobb - First, 10 percent of the total zone production paid on gross proceeds and reported to MMS. Second, 25 percent of transactions reported to MMS.

Toni Hennike - 10 percent of the total zone production as reported to MMS paid on gross proceeds or 15 percent of transactions paid gross proceeds in a zone and reported to MMS.

The committee asked for a caucus to consider their positions on representative volume.

INDUSTRY PROPOSAL ON REPRESENTATIVE VOLUME

- 10 percent of the total zone production paid on gross proceeds and reported to MMS, or
- 15 percent of transactions paid gross proceeds in a zone and reported to MMS.

If no representative volume

- Weighted average of lessee's true-up for all zones.

MMS/STATES PROPOSAL ON REPRESENTATIVE VOLUME

- 10 percent of the total zone production paid on gross proceeds and reported to MMS, or
- 20 percent of transactions paid on gross proceeds in a zone and reported to MMS.

If no representative volume

- Pick at random, leases that will make up 10 percent of the production in the zone. (six months after end of index year)
- Obtain raw data (sample enough to get to 10 percent of the zone production) to calculate the median value two years after the end of the index year.
- Raw data will include lessee's non-dedicated arm's-length and affiliate's arm's-length purchases in the zone.

TENTATIVE COMMITTEE FRAMEWORK FOR A PROPOSAL (No Agreement)

- 10 percent of the total zone production paid on gross proceeds and reported to MMS, or
- 20 (15) percent of transactions paid on gross proceeds in a zone and reported to MMS.

If no representative volume

- Pick at random enough leases to make up the 10 percent of the total zone production as reported to MMS or 20 percent of transactions to include arm's-length and non-arm's-length audited data per the improved benchmarks. Lessee will submit the raw data such as contracts and purchase statements. An example of benchmarks would be 1) 2014 data 2) arm's-length contracts 3) affiliates arm's-length contracts.
- Leases will be picked six months after the index year and the true-up calculation would be within two years after the index year.

The committee asked for a caucus to consider the new proposal.

MMS/STATES COUNTER PROPOSAL

- Data is needed to test the index when there is no representative sample.
- MMS needs both arm's-length and affiliate data.
- MMS will take a snapshot six months into the index year to determine if there is a representative sample.
- If there is no representative sample (10 percent for volume or 20 percent for transactions) then:
 - Those companies willing to provide the data needed by MMS to test the index value will be able to come to MMS on a first-come first-served basis and negotiate the true-up value through the ADR process. The MMS will settle with enough companies to obtain a representative sample of production or transactions in a zone.
 - For those companies that will not provide data or MMS does not settle with, the MMS will exercise the Secretary's discretion to establish value by calculating the median value based on the data provided by those companies that settled with MMS.

INDUSTRY COUNTER PROPOSAL

- If there is no representative volume then use the median value from an adjacent zone to make up the difference between the 10 percent threshold and what ever the percentage is, for example 7 percent. (make up 3 percent by looking at an adjacent zone median value)

The committee came to a consensus on the following for representative sample:

- 10 percent of the total zone production paid on gross proceeds as reported to MMS, or
- 20 percent of transactions paid on gross proceeds in a zone and reported to MMS.

If the Committee does not reach consensus on the MMS/State counter proposal above for determining value when there is no representative sample, the MMS will make the decision on value when there is no representative sample for a zone.

The meeting adjourned at 4:30 p.m.

DECEMBER 19 - 20
MINUTE CORRECTIONS

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CORRECTION

10 Industry
 Recommendations

"The transportation would not include cost to dehydrate, to process, or for fuel. It would only include special line costs."

Change to:

"The issue of transportation does not address the costs to dehydrate or process." [Delete next sentence.]

10 (last sentence)

"The production amounts to approximately 25% of the San Juan Basin production."

Change to:

"The coal seam production in the San Juan Basin amounts to approximately 25% of federal onshore production. The Committee's treatment of unique offshore production is inconsistent with the Committee's treatment of unique onshore production."

12 San Juan Basin Zone

"There will be no distinction for coal seam gas."

Change to:

"There will be no separate zone for coal seam gas in the San Juan Basin." The issues involving the safety net calculation for nonconventional gas could not be agreed upon by the Committee. Therefore, there will be no Committee language on nonconventional gas production in the Committee Report or the proposed rule."

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PROPOSED RULES

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meeting of the Federal Gas Valuation Negotiated Rulemaking Committee

Wednesday, June 1, 1994

***28304 AGENCY:** Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Secretary of the Department of the Interior (Department) is establishing a **Federal Gas Valuation Negotiated Rulemaking Committee** (Committee) to develop specific recommendations with respect to Federal gas valuation pursuant to its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 et seq. (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the Agency in performing its duties under FOIA. Once approved, the Committee's charter to conduct a negotiated rulemaking will be filed with the appropriate committees of Congress and the Library of Congress in accordance with section 9(c) of section 9(a)(2) of the Federal Advisory Committee Act (FAA), 5 U.S.C. App. 2.

DATES: The Committee will have its first meeting on June 15 and 16, 1994 from 8 a.m. to 5 p.m. and on June 17, 1994, from 8 a.m. to 1 p.m.

ADDRESSES: The meeting will be held in the auditorium of building 85 on the Denver Federal Center, West Sixth Avenue and Kipling Street, Lakewood, Colorado.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3920, Denver, CO 80225-0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3920, Denver, CO 80225-0165, telephone number (303) 275-7200, fax number (303) 275-7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the Federal Register.

The meeting will be open to the public without advanced registration. Public
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Cite as: 59 FR 28304, *28304)

attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration. Ten statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address. Additional background information regarding the establishment and membership of this Committee will be released in the Federal Register announcing the approval of the charter.

Dated: May 26, 1994.

James W. Shaw,

Associate Director for Royalty Management.

(FR Doc. 94-13371 Filed 5-31-94; 8:45 am)

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PROPOSED RULES

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Chapter II

Meetings of the Federal Gas Valuation Negotiated Rulemaking Committee

Friday, December 23, 1994

*66286 AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The Secretary of the Department of the Interior (Department) has established a **Federal Gas Valuation Negotiated Rulemaking Committee** (Committee) to develop specific recommendations with respect to Federal gas valuation under its responsibilities imposed by the Federal Oil and Gas Royalty Management Act of 1982, 30 U.S.C. 1701 et seq. (FOGRMA). The Department has determined that the establishment of this Committee is in the public interest and will assist the agency in performing its duties under FOGRMA.

DATE: The Committee will meet on January 30, 1995, 10 a.m. to 5 p.m.; January 31, 1995, 8 a.m. to 5 p.m.; February 1, 1995, 8 a.m. to 5 p.m.; February 2, 1995, 8 a.m. to 5 p.m.; February 3, 1995, 8 a.m. to 12 p.m.

ADDRESSES: The meetings will be held at the Denver Federal Center, building 85, 5th Avenue and Kipling Streets, Lakewood, Colorado, 80225, telephone (303) 275-7200.

Written statements may be submitted to Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3150, Denver, CO 80225-0165.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Gibbs Tschudy, Chief, Valuation and Standards Division, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS-3150, Denver, Colorado, 80225-0165, telephone number (303) 275-7200, fax number (303) 275-7227.

SUPPLEMENTARY INFORMATION: The location and dates of future meetings will be published in the Federal Register.

The meeting will be open to the public without advanced registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the Committee for its consideration.

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(Cite as: 59 FR 66286, *66286)

Written statements should be submitted to the address listed above. Minutes of Committee meetings will be available for public inspection and copying 10 days following each meeting at the same address. In addition, the materials received to date during the input sessions are available for inspection and copying at the same address.

Dated: December 16, 1994.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 94-31563 Filed 12-22-94; 8:45 am]

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59 FR 66286-01, 1994 WL 709453 (F.R.)

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